

REMARKS

Applicants submit this reply in response to the final Office Action mailed October 23, 2006 and in conjunction with a concurrently-filed Request for Continued Examination ("RCE") and associated fees pursuant to 37 C.F.R. § 1.114.

Claims 1-9 are pending, of which claims 1, 5, and 9 are independent. Applicants have amended each of the independent claims to more appropriately define their invention. Support for the amendments can be found, *inter alia*, at paragraph [031] in the specification. In the final Office Action, the Examiner rejected claims 1-9 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. US 2003/0233523 to Jamil et al. ("Jamil"). Applicants respectfully traverse these rejections for at least the reasons set forth below.

Information Disclosure Statement

On August 4, 2006, Applicants submitted an Information Disclosure Statement ("IDS") for the Examiner's consideration. However, Applicants did not receive a signed and initialed copy of this IDS in their latest communication from the U.S. Patent and Trademark Office. For this reason, Applicants respectfully request consideration of their IDS filed on August 4, 2006.

Request for Examiner Interview

In the event that the Examiner wishes to maintain the pending 35 U.S.C. § 102(e) rejections in view of the remarks below, Applicants respectfully request an interview with the Examiner to discuss the Jamil reference before the next Office Action is issued.

Claim Rejections

Claims 1-9 were rejected under 35 U.S.C. § 102(e) as being anticipated by Jamil. In order to properly establish a proper anticipation rejection, each and every element of the claims at issue must be found in the applied prior-art reference, either expressly or under principles of inherency. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). In this case, Jamil fails to disclose each and every element of the Applicants' claimed invention.

Applicants' independent claims 1, 5, and 9 call for combinations including, for example, "creating an electronic data element comprising a first field having an identifier and a second field having a state of the identifier, wherein the state of the identifier may be set to... a first state...a second state... [or] a third state," "assigning the identifier to one or more data objects stored in a memory," and "replicating the one or more assigned data objects from the source system to the target system if the state of the identifier is the third state."

Applicants respectfully submit that the pending claims differ from Jamil in several respects. First, in both the non-final and final Office Actions the Examiner appears to acknowledge that Jamil does not teach or suggest a "third state," as recited in Applicants' independent claims 1, 5, and 9. For at least this reason, Jamil cannot anticipate the pending claims. Second, Jamil fails to teach or suggest "one or more data objects stored in a memory," as recited in amended claims 1, 5, and 9. While the Examiner has equated the private storage units in Jamil with the Applicants' claimed

“one or more data objects,” the private storage units in Jamil are hardware devices that contain memory and, thus, cannot reasonably be construed as “data objects *stored in a memory*,” as presently claimed. Third, Applicants submit that the Examiner’s understanding of “data objects” in Jamil is inconsistent with the Applicants’ claimed step of “replicating the one or more assigned data objects from a memory in the source system to a memory in the target system.” Jamil also fails to teach or suggest the Applicants’ claimed first and second states. Applicants discuss each of the above-noted deficiencies in Jamil below in more detail.

A. The Examiner apparently acknowledges that Jamil fails to teach or suggest a “third state,” as claimed.

Each of the Applicants’ independent claims 1, 5, and 9, as presently amended, calls for a combination including, for example, “a third state... whereby said identifier is ***not assignable*** to one or more data objects stored in a memory” (emphasis added). In both the non-final and final Office Actions, the Examiner reasoned that Jamil teaches the claimed “third state... whereby said identifier is not assignable” because “figure 4, 490; figure 7, 790; figure 9a~9d, 990 [in Jamil] ***show the assignment***” (emphasis added). Non-final Office Action, p. 6; final Office Action, p. 6.

Regardless of the accuracy of the Examiner’s characterization of Jamil, the Examiner’s reasoning does not support the pending anticipation rejections of claims 1, 5, and 9 under 35 U.S.C. § 102(e). More specifically, any relied-on disclosures in Jamil that “show the assignment” cannot reasonably teach or suggest the Applicants’ claimed “third state... whereby said identifier is not assignable to one or more data objects stored in a memory.” Thus, the Examiner’s characterization of Jamil appears to

acknowledge that Jamil fails to teach or suggest at least "a third state," as presently claimed.

B. Jamil fails to show, teach, or suggest "one or more data objects stored in a memory," as claimed.

In the non-final Office Action dated May 5, 2006, the Examiner rejected all of the pending claims under 35 U.S.C. § 102(e) as being anticipated by Jamil. In their response of August 4, 2006, Applicants noted that the Examiner apparently equated the private storage units in Jamil with the Applicants' claimed "one or more data objects."¹ Applicants argued that because the private storage units in Jamil are hardware devices, Jamil's private storage units could not reasonably be equated with Applicants' claimed "one or more data objects," which are expressly defined in the specification as "any kind or type of data." Specification, para. [031].

In the final Office Action dated October 23, 2006, the Examiner maintained the rejections over Jamil primarily on the basis that "a storage device is an object comprising volumes of data, and as such, it qualifies as a 'data object.'" Final Office Action, p. 2. In other words, the Examiner reasoned that each private storage unit in Jamil is an object containing data, thereby rendering it a "data object."

In this response, Applicants have amended independent claims 1, 5, and 9 to recite, *inter alia*, "one or more data objects stored in a memory" (emphasis added) to better distinguish the claimed data objects from the physical memory in which they are stored. Indeed, the definition of "data object" in the Applicants' specification expressly

¹ The Office Actions contain a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Actions.

distinguishes the claimed data objects from the volatile or non-volatile physical memory in which they are stored. See Specification, para. [031] ("The term 'data object' broadly refers to any kind or type of data... *irrespective of whether they are stored in volatile memory or non volatile memory*") (emphasis added).

Because the private storage units in Jamil are memory units containing physical memory, they cannot also be "one or more data objects stored in a memory," as recited in each of Applicants' amended independent claims 1, 5, and 9. Accordingly, Applicants submit that "one or more data objects stored in a memory," as presently claimed, is absent from the Jamil disclosure.

- C. The Examiner's understanding of "data objects" in Jamil is inconsistent with "replicating the one or more assigned data objects from a memory in the source system to a memory in the target system," as claimed.

As noted above, the Examiner's pending rejections are based on the alleged equivalence of the private storage devices in Jamil and Applicants' claimed "one or more data objects stored in a memory." See, e.g., final Office Action, p.3.² Even if such an equivalence were assumed to be correct (which Applicants do not believe), Applicants submit that Jamil would still fail to teach or suggest at least the step of "replicating the one or more assigned data objects from a memory in the source system to a memory in the target system," as recited in amended claims 1, 5, and 9.

According to the Examiner's characterization of Jamil, the private storage units (i.e., the alleged data objects) are replicated from a memory in a source system to a

² On page 3 of the final Office Action, the Examiner confirmed that "Applicants not only correctly assert that the Examiner equated the data portions in Jamil with the Applicants' claimed 'identifier,' but also readily admit that the Examiner's equating of the 'storage devices' in figure 4 of Jamil with Applicants' claimed 'one or more assigned data objects.'"

memory in a target system in accordance with the Applicants' claimed "replicating" step recited in amended claims 1, 5, and 9. Taken literally, replicating private storage units in Jamil from a source system to a target system, as claimed, would require physical replication of the source-system private storage units and subsequent insertion of the physically-replicated storage units into the target system. Jamil appears to be completely silent regarding any manufacturing or other physical replication processes concerning the private storage units.

Alternatively, the Examiner may suggest that a private storage unit in Jamil can be "replicated" if all of its data contents (such as its data volumes) are copied from a source memory to a target memory. However, Jamil again appears to be completely silent regarding replication processes that copy the entire contents of a private storage unit into a target memory. Instead, Jamil is concerned with storage of individual data portions and does not appear to disclose copying the entire contents of a private storage unit. See, e.g., Jamil, FIG. 2 (copying individual data portions 216-219 from one memory into another).

In sum, there appears to be no reasonable interpretation of Jamil that teaches or suggests at least "replicating the one or more assigned data objects from a memory in the source system to a memory in the target system," as claimed.

D. Jamil fails to show, teach, or suggest "a first state," as claimed.

Each independent claim 1, 5, and 9 calls for a combination including, for example, "a first state, in which said electronic data element may be accessed by one or more data object processing operations and whereby said identifier is assignable to one or more data objects stored in a memory." The Applicants respectfully submit that Jamil

fails to teach or suggest “a first state,” as claimed, since Jamil fails to teach or suggest at least “said identifier is assignable to one or more data objects stored in a memory.”

For at least this reason, Jamil cannot anticipate claims 1, 5, or 9.

As previously discussed, the Examiner’s rejections equated the Applicants’ claimed “identifier” with data portions disclosed in Jamil. However, the data portions in Jamil are not “assignable to one or more data objects stored in a memory,” as recited in claims 1, 5, and 9. Rather, the data portions are instead assigned to private storage units. As such, the data portions in Jamil cannot be an “identifier is assignable to one or more data objects stored in a memory,” as claimed.

E. Jamil fails to show, teach, or suggest “a second state,” as claimed.

Each independent claim 1, 5, and 9 calls for a combination including, for example, “a second state, in which said electronic data element may not be accessed by one or more data object processing operations and whereby said identifier is assignable to one or more data objects stored in a memory.” The Applicants respectfully submit that Jamil fails to teach or suggest “a second state,” as claimed, since Jamil fails to teach or suggest at least “said identifier is assignable to one or more data objects stored in a memory.” Accordingly, Jamil cannot anticipate claims 1, 5, or 9.

As previously discussed, the Examiner’s rejections equated the Applicants’ claimed “identifier” with data portions disclosed in Jamil. However, the data portions in Jamil are not “assignable to one or more data objects stored in a memory,” as recited in claims 1, 5, and 9. Rather, the data portions are instead assigned to private storage units. As such, the data portions in Jamil cannot be an “identifier is assignable to one or more data objects stored in a memory,” as claimed.

Dependent Claims 2-4 and 6-8

Claims 2-4 and 6-8 depend on independent claims 1 or 5 and are therefore allowable for at least the same reasons.

Conclusion

The preceding remarks are based only on the arguments in the Office Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Office Action. The claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding remarks in favor of patentability is advanced without prejudice to other bases of patentability.

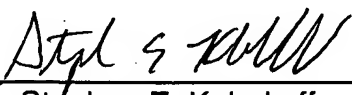
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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